

ESTHER M. MOORE

IBLA 82-163

Decided February 18, 1982

Appeal from a decision of the Idaho State Office of the Bureau of Land Management declaring an unpatented mining claim abandoned and void. I MC 37094.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Esther M. Moore, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of October 26, 1981, the Idaho State Office of the Bureau of Land Management (BLM) declared the Button Placer mining claim, I MC 37094, abandoned and void because a copy of the affidavit of annual assessment work performed on the claim had not been filed with BLM for 1980. The owner of that claim, Esther M. Moore, appeals.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, 1/ to file evidence of assessment work, or a notice of intention to hold the mining claim, with BLM within the 3-year period following October 21, 1976, and also on or before

1/ The Button Placer mining claim was located June 18, 1954, and recorded with BLM on Oct. 12, 1979.

December 30 of each calendar year thereafter. Failure to so file within the prescribed time limit invokes a statutory conclusive presumption that the mining claim was abandoned, see FLPMA section 314(c), and "it shall be void" under 43 CFR 3833.4.

Appellant's statement of reasons for appeal states in part:

This mine was filed in Grangeville, Idaho, in 1954 and the proof of labor has been filed in that office every year since then. A proof of labor was filed in 1980 in Grangeville, Idaho, and in 1981. I thought I had filed one with you in 1980 as I did in 1981. I certainly did not wish to abandon the mine or I would not have done the labor and filed it for these years.

We sympathize with appellant's plight, but our review of the case file indicates that BLM was correct in stating that it never received for 1980 either an affidavit of assessment work performed on the claim or a notice of intention to hold it. That being the case, we are unable to avert the unhappy consequence that the statute imposes, for this Board has no authority to excuse lack of compliance. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Proper recordation in the appropriate county office alone does not fulfill the obligations established under FLPMA and its implementing regulations.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

